Public Service Commission

Richard E. Hitt, General Counsel

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September 28, 2004

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Marlene H. Dortch, Secretary Federal Communications Commission Office of the Secretary 9300 East Hampton Drive Capitol Heights, MD 20743 VIA Federal Express overnight service

Irene Flannery VIA Federal Express overnight service Universal Service Administrative Company 2000 L Street NW, Suite 200 Washington, D.C. 20036

Re: Hardy Telecommunications, Inc.
Initial Certification Pursuant to 47 C.F.R. § 54.313
CC Docket No. 96-45
(WVPSC Case No. 03-0305-T-PC)

Dear Ms. Dortch and Ms. Flannery:

The Public Service Commission of West Virginia has designated Hardy Telecommunications, Inc. (Hardy) as an eligible telecommunications carrier (ETC), pursuant to 47 U.S.C. § 214(e), for the Moorefield Exchange served by Citizens Telecommunications Company of West Virginia, doing business as Frontier Communications of West Virginia (Frontier). Frontier is a rural telecommunications company in Hardy County, West Virginia. This designation is reflected in a August 27, 2004, Commission Order, in which the Commission adopted a Recommended Decision, with one exception, and imposed additional conditions.

The WVPSC Order required the Commission Staff to provide to the FCC and the Universal Service Administrative Company, as requested in the FCC's Public Notice DA 97-1892 (Rel. September 29, 1997), a certified copy of the Order designating Hardy as an ETC in Frontier's Moorefield Exchange, along with a list of the areas designated to be served by Hardy.¹

Ms. Dortch, FCC
Ms. Flannery, USFC
Hardy Telecommunications, Inc.
WVPSC Case No. 03-0305-T-PC
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In compliance with both the WVPSC Order and the FCC directive, I am enclosing certified copies of both the Recommended Decision entered May 14, 2004, and the Commission Order entered August 27, 2004, which adopted the Recommended Decision with one exception, and imposed additional conditions. These certified copies are being filed to verify that Hardy has received initial certification as an eligible telecommunications carrier.

Please contact the undersigned if there are any questions concerning this matter.

Sincerely,

Caryn Watson Short
Supervising Attorney

Public Service Commission of West Virginia

WV State Bar No. 4962

(304) 340-0338

cc: Sandra Squire, WVPSC Executive Secretary, w/o Att.

Jack Walters, WV Counsel for Hardy Telecommunications, Inc, w/o Att.

Patrick W. Pearlman, Counsel for WV Consumer Advocate, w/o Att.

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PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

CERTIFICATION OF TRUE COPY

RE: CASE NO. 03-0305-T-PC

HARDY TELECOMMUNICATIONS, INC.

I, Sandra Squire, Executive Secretary of the Public Service Commission of West Virginia, certify that the attached is a true copy of the August 27, 2004 Commission Order and the May 14, 2004 Recommended Decision in Case No. 03-0305-T-PC, <u>Hardy Telecommunications</u>, <u>Inc.</u>, as the same appears on file and of record in my office.

Given under my hand and the seal of the Public Service Commission of West Virginia, in the City of Charleston, Kanawha County, this 28th day of September, 2004.

Sandra Squire

Executive Secretary

SS/s Attachments

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PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 27th day of August, 2004.

CASE NO. 03-0305-T-PC

HARDY TELECOMMUNICATIONS, INC.

Petition for consent and approval for Hardy Telecommunications, Inc. to become an eligible telecommunications carrier.

COMMISSION ORDER

This case involves Hardy Telecommunications Inc.'s (Hardy) petition to be designated an eligible telecommunications carrier (ETC) in the Moorefield exchange, which is also served by Citizens Telecommunications of West Virginia dba Frontier Communications of West Virginia (Frontier). The Administrative Law Judge entered a Recommended Decision, granting Hardy ETC status in the Moorefield exchange, with various conditions. Both Frontier and the Consumer Advocate Division (CAD) filed exceptions. The Commission adopts the Recommended Decision, with one exception, and imposes additional conditions.

GENERAL FACTUAL BACKGROUND

Hardy Telecommunications' Background Information

Hardy is a wire line, local exchange carrier certificated to provide telecommunications service in Grant, Hampshire, Hardy and Pendleton counties. Hardy is both a telephone cooperative and a rural telephone company. In two exchanges in Hardy County (i.e. Lost River and South Fork), Hardy operates as an incumbent local exchange carrier (ILEC). In the remainder of its certificated service territory, Hardy is authorized to operate as a facilities-based competitive local exchange carrier (CLEC). See CAD's Initial Brief at p. 3; CAD Exhibit 1 at p 2.

The Commission previously designated Hardy as an ETC for its ILEC service area. *Id.* Hardy's current petition covers the remainder of its certificated territory in Hardy County, which consists of one exchange (Moorefield), which is also served by Frontier. *Id.* at 4. Hardy currently serves approximately 270 customers, representing 300 access lines out of 3,200 total lines in the Moorefield exchange. *Id.*

Hardy's petition is limited to the Moorefield exchange in Frontier's Bluefield study area. *Id.* at p. 5. This area received approximately \$1,123,689 in monthly high cost support (\$13,483,000 annualized), based on information for the 4th Quarter 2003. *Id.* This works out to \$11.97 in support per line per month. Because Frontier disaggregated its high cost support, support within the Bluefield study area varies by wire center. *Id.* Under its disaggregation plan, the Moorefield exchange receives \$37.01 per line per month in high cost support. *Id.*

Intervenor Frontier's Background Information

Frontier is an incumbent wire line telecommunications company serving over 150,000 customers in 34 West Virginia counties. See CAD's Initial Brief, p. 4; Frontier Petition to Intervene p. 1; and Frontier Exhibit 1, pp. 4-5. Frontier is a rural telephone company (RTC) and its service territory is divided into three study areas representing the service territories of three different telephone companies acquired by Frontier over the years: 1) Bluefield study area (wire centers previously served by General Telephone Co., located primarily in Mercer and McDowell Counties and a portion of the Eastern Panhandle, serves 93,847 access lines); 2) St. Mary's study area (wire centers previously served by Contel and scattered throughout state, serves 36,981 access lines); 3) Mountain State study area (wire centers originally served by Mountain State Telephone Co., located primarily in Webster and Pocahontas counties and rural portions of other counties, serves 25,889 access lines). Id., Frontier Exhibit 1 p. 5; and CAD Exhibit 1 p. 3. Frontier receives approximately \$32 million annually in federal high-cost support for its three study areas. See CAD's Initial Brief p. 5.

The Bluefield study area encompasses a large but non-contiguous geographic territory in West Virginia, extending from the very southernmost portion of the state along the Virginia-West Virginia border in Mercer County to the Eastern Panhandle. *See* Recommended Decision at p. 25.

PROCEDURAL BACKGROUND1

On March 3, 2003, Hardy filed a petition, pursuant to Section 214(e)(2) of the federal Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), requesting designation as an ETC to receive support from the federal universal service program in Frontier's Moorefield service area. Hardy's petition indicated it currently provides competitive local exchange services in Frontier's Moorefield service area. Hardy argued that it fulfills all the criteria for designation as an ETC and that such designation would be in the public interest.

By Order entered April 25, 2003, intervenor status was granted to the CAD and Frontier. This matter was also referred to the Division of Administrative Law Judges (ALI).

In response to options given by the ALJ in a Procedural Order, the CAD filed a joint response on behalf the CAD, Hardy and Frontier. According to the joint response, while the parties agreed a number of the issues relevant to Hardy's ETC petition could be resolved by stipulation, there were several issues that were not identical to those being considered by the Commission in the pending Highland Cellular, Inc. proceeding (Highland Cellular)2, on which the parties wished to conduct discovery and which could warrant development at hearing, including the CAD's proposed benchmarking standard; the fact that the wire centers in Frontier's service territory in which Hardy seeks ETC status are not the same as those for which Highland Cellular sought ETC status and there may be different considerations relating to Hardy's ability to serve those wire centers; and the fact that Hardy, unlike Highland Cellular, is not limited by regulation from building its own network using its preferred technology outside of the area for which it seeks ETC designation. The parties did not wish to agree to a settlement resting entirely on Highland Cellular and did not wish to wait for a ruling on the public interest issue in that case, since it would not address the CAD's benchmarking proposal. The parties opted to litigate this case.

On November 7, 2003, Commission Staff (Staff) filed a Final Joint Staff Memorandum and recommended that the parties stipulate that if the Commission upholds the Recommended Decision in Highland Cellular, Hardy also would be entitled to ETC

A detailed account of the procedural history in this case is set forth in the Recommended Decision, entered on May 14, 2004. The Recommended Decision also sets forth specific arguments made in initial pleadings.

²Highland Cellular, Inc., Case No. 02-1453-T-PC.

designation in Frontier's territory. If the parties would not stipulate, Staff recommended this case be held in abeyance, pending the issuance of the Commission's decision in *Highland Cellular*. Staff also recommended Hardy be required to comply with any additional conditions or requirements established in Case No. 03-1199-T-GI.³

On November 18, 2003, Frontier filed a response to Staff's final memorandum, arguing that *Highland Cellular* and this case are not sufficiently alike to rely upon that case to decide the Hardy ETC application.

On December 23, 2003, Hardy and Frontier filed prepared direct testimony. Thereafter and subsequent to the ALJ's granting of an extension, Frontier and the CAD filed prepared rebuttal testimony on January 16, 2004. Frontier, on the same date, also moved to strike portions of the pre-filed testimony of Hardy witness Dwight Welch.

On January 27, 2004, subsequent to the postponement of the scheduled hearing due to a winter storm, the parties jointly moved the Chief ALJ to cancel the hearing. To expedite the processing of the case, the parties agreed to submit the case on the basis of their pre-filed testimony.

By Procedural Order entered on January 27, 2004, the Chief ALJ granted the request and cancelled the scheduled hearing. Thereafter, Hardy, Frontier and the CAD filed either initial briefs and/or proposed orders. Frontier and the CAD thereafter filed reply briefs.

Recommended Decision

A Recommended Decision was entered on May 14, 2004, granting Hardy's petition for ETC designation in the Moorefield Exchange. The Chief ALJ conditioned the designation upon the following: 1) Hardy shall serve the entire Moorefield exchange, either through its own facilities or a combination of its own and Frontier's facilities; 2) Hardy shall comply with the advertising requirements established in this Commission's

³The General Investigation was instituted with regard to establish conditions to grant ETC status to carriers and establish uniform standards determine ETC compliance with applicable federal requirements regarding use of federal USF money provided to ETCs. A Recommended Decision was entered in the GI case on July 1, 2004. Exceptions to the Recommended Decision have been filed by the CAD, the Independent Group, and Frontier.

Gateway⁴ decision; and 3) Hardy shall comply with any other restrictions or requirements imposed upon ETC designees in *Highland Cellular*. The Chief ALJ also ordered Staff to file the appropriate petition with the FCC, within 60 days, seeking concurrence in the redefinition of Hardy's service area for ETC purposes as being the entirety of Frontier's Moorefield exchange.

The Chief ALJ set forth, in detail, the evidence presented by the parties through the submitted direct and rebuttal testimonies.

The Chief ALJ explained that there was no dispute for most of the elements which must be demonstrated to obtain ETC designation by an applicant. Hardy is a common carrier. It is the incumbent LEC for its own service territory and it is a competitive LEC in the portions of those same counties where it is not the incumbent, with the exception of the service territory of Spruce Knob-Seneca Rocks Telephone Company. Hardy is already offering to 270 customers the nine services supported by the universal service mechanism. Therefore, it is clearly offering or capable of offering the nine supported services. Further, the Chief ALJ noted that according to witness testimony, Hardy was not just seeking to provide service in the town of Moorefield, but would commit to providing service throughout the entire Moorefield exchange and would comply with any ETC requirements on serving the whole exchange area. Thus, it has met the requirement of committing to offer those services throughout the designated service area. The Chief ALJ also found Hardy is also extensively advertising the availability of its services and their charges as verified by the advertising and media information attached to its petition filed on March 3, 2003, and also as verified by the fact that Frontier acknowledges that Hardy is a competitor and that Frontier has lost a number of customers to Hardy. Finally, Hardy must offer Link Up and Lifeline services as part of its service offerings to low-income subscribers.

The Chief ALJ explained the issue in this proceeding was whether it is in the public interest to designate Hardy as an ETC in Frontier's Moorefield exchange. The Chief ALJ specifically addressed the evidence pertaining to Hardy's local presence in the Moorefield exchange, Frontier's own improvement efforts since Hardy's entrance to the market in the Moorefield exchange, and Hardy's investment of significant capital to overbuild Frontier's network in Moorefield. As explained by the Chief ALJ, Hardy's witness promised that, if Hardy obtained USF support, it would flow any revenues it receives back into the community. Hardy's witness also pointed out that, no matter what

⁴Gateway Telecomm, LLC dba StratusWave Communications, Case No. 00-1656-T-PC (May 4, 2001, Commission Order).

there are certain policy issues relating specifically to the regulation provided by the Public Service Commission of West Virginia under the statutory scheme set forth in Chapter 24 of the West Virginia Code which no party to this proceeding has addressed. Under West Virginia Code §24-2-11(a), no public utility, person or corporation may begin the construction of any plant, equipment, property or facility for furnishing any of the services under the jurisdiction of the Public Service Commission nor apply for nor obtain any franchise, license or permit from any municipality or other governmental agency unless and until the Public Service Commission finds that the public convenience and necessity require the proposed service, construction, etc. The certificates granted to Frontier, Hardy and any other telecommunications provider in the State of West Virginia, whether they are wireless carriers or wireline carriers, interexchange carriers or CLECs, are exactly the same and the Commission had to make exactly the same finding of public convenience and necessity in order to grant them, whether or not those findings are explicitly stated in the orders. Given this similarity of certificates, the undersigned finds it discomfiting to be expected to pick and choose among carriers whose certificates have equal standing and whose services the Public Service Commission has already concluded are required by the public convenience and necessity. Denial of ETC designation to any ETC applicant in West Virginia means that the Public Service Commission is automatically placing that carrier at a financial and competitive disadvantage relative to the incumbent local exchange carrier and, possibly, previously granted ETC designees, by denying subsequent ETC applicants the same access to Universal Service Funding support as it granted to prior ETC designees or the incumbent providers. Once the Public Service Commission has concluded that the public convenience and necessity require a particular service, the undersigned is hard-pressed to understand under what legal basis under Chapter 24 of the West Virginia Code the Commission then makes an affirmative decision to discriminate between those providers by denying access to subsidy funds to some, while granting it to others.

Id. at 30.

Exceptions of Frontier

On June 1, 2004, Frontier filed "Exceptions to Recommended Decision." Frontier does not dispute that Hardy offers and advertises the services supported by universal service, as well as Lifeline and Link Up in Moorefield. Frontier disputes whether

designating Hardy an ETC in Frontier's study area is in the public interest and whether Hardy should be relieved from serving all of Frontier's Bluefield study area. Frontier has argued that Hardy does not meet the requirements to be an ETC because it cannot provide the supported services and Lifeline and Link Up throughout the Bluefield study area and does not advertise there. Further, Hardy is not certificated to provide service outside of Hardy, Hampshire and Grant Counties.

Frontier explained it had made four primary arguments as to why it was not in the public interest to designate Hardy an ETC in the Bluefield study area: 1) designation of Hardy does not advance the goals of universal service; 2) advancement of competition alone is insufficient to demonstrate that designation of Hardy is in the public interest; 3) the negative impact of such designation on the universal service fund and on universal service in West Virginia would be too great given the significant growth in the fund size and ongoing FCC rulemakings seeking ways to limit the fund's growth; and 4) Hardy engages in a kind of cream skimming by serving only the most densely populated areas in the Moorefield exchange and failing to utilize unbundled network elements (UNEs) and resale, available to it through the interconnection agreement.

Should ETC designation be granted, Frontier argued the following conditions should be imposed: 1) reducing rates by the amount of per-line USF monies received to avoid a windfall and/or in the alternative, using all USF receipts for incremental capital investment; 2) submitting to annual Commission review of its use of USF monies, including review of its infrastructure development plan; 3) taking all necessary steps to provide service to all customers who make reasonable requests by building out its own network or using UNEs or resale; and 4) designating Hardy as an ETC only for so long as the incumbent's universal service receipts are not reduced by the existence of additional ETCs in its study areas.

The following briefly summarizes Frontier's main arguments, as set forth in the exceptions. With regard to the Chief ALJ's determination of public interest, Frontier argues the finding is based on the benefits of competition and that the Chief ALJ's bottom line is that the Commission should not deny any ETC application because that would place the applicant carrier at a financial and competitive disadvantage relative to the incumbent LEC and possibly previously granted ETC designees. Frontier argues while that may be true, it is completely irrelevant. Congress made the policy decision that not every competitor or service provider operating in an RTC's area will get USF money. Frontier states that neither the Chief ALJ nor this Commission is free to substitute their policy choices for those made by Congress.

It is also Frontier's position that the Recommended Decision thwarts Congress' policy goals by misinterpreting the public interest test to involve competitive concerns and by refusing to enforce the statutory requirement that Hardy serve the entirety of Frontier's study area. Also, Frontier discussed the Aet's two separate goals of advancement of competition and advance of universal service, as well as the establishment of separate schemes to advance each goal.

Frontier emphasizes that Congress did not intend for the promotion of competition to satisfy the public interest test. If that was the case, there would be no need for the test since designating additional ETCs always promotes competition. Had Congress intended for the promotion of competition to satisfy this test, it would have commanded the Commission to designate multiple ETCs in RTCs study areas.

Further, with respect to the public interest test, Frontier took issue with the fact that the Chief ALJ made no mention of the Federal-State Joint Board on Universal Service's (Joint Board) recent recommendation⁷ regarding portability of universal service funds among ETCs, wherein it addressed several issues relating to the designation process and specifically recommended several factors that the Commission should consider in evaluating the public interest test. Frontier argues that it has already fulfilled the purpose and promise of universal service in its study area. Frontier says all of the supported services are available at affordable rates. Frontier also avers that it is far from clear that Hardy is able to be the carrier of last resort, if Frontier were to withdraw as an ETC.

Frontier also believes the Commission must consider the impact on the overall size of the universal service fund in evaluating public interest. Frontier urges that focusing, as the Chief ALJ did, on the relatively small impact that any single ETC has on the overall size of the fund, is a sure way to bankrupt the fund. According to Frontier, it is the overall size of the fund and the ability to sustain its spiraling growth that will adversely impact consumers and universal service in West Virginia. It is Frontier's position that the "fact that a rural study area qualifies for high cost support is an implicit recognition that the costs of providing service in that study area are so high that the goals of universal service would not be achieved but for the support."

Frontier responded to the Chief ALJ's policy concern that it would be inconsistent with the Commission's certification of multiple carriers to find it is not in the public interest to designate any certificated carrier as an ETC. Frontier argues the public interest considerations in deciding to certificate a carrier are wholly different from those at issue

⁷Federal-State Joint Board on Universal Service, Recommended Decision, CC Docket 96-45, FCC04J-1 (rel. Feb. 27, 2004).

in deciding whether to designate a particular carrier to be an ETC in an RTC's service area. The fact that it may be in the public interest to certificate yet another competitor does not mean it is in the public interest to designate that carrier an ETC.

Frontier disputes that Hardy's service area should be redefined as anything other than Frontier's entire study area. Among other arguments in support of this position, Frontier says the Chief ALJ did not discuss Frontier's assertion that the prerequisite of a Joint Board recommendation has not been met. Frontier asserts that Section 214(e)(5) of the Act requires a Joint Board recommendation regarding each proposal for redefinition.

Finally, Frontier sets forth the roles of this Commission and the FCC in matters such as this. Frontier believes that the Chief ALJ failed to delineate between its authority and the FCC's authority by following FCC non-binding Section 214(e)(6) decisions instead of reaching her own conclusions.

Exceptions of the CAD

The CAD filed exceptions to the Recommended Decision on June 1, 2004. While the CAD does not object to the Chief ALJ's determination that Hardy should be designated an ETC in Frontier's Moorefield wire center, the CAD takes exception to certain of the Chief ALJ's conclusions.

First, the CAD argues the Chief ALJ erred in concluding that the CAD's public interest analysis is inappropriate. With regard to the Chief ALJ's discussion of the FCC's recent USF analysis, the CAD states she is partly right in that the FCC did not engage in the analysis of loop support by study areas advocated by the CAD here. However, the CAD says she is wrong that it is the impact of individual ETC application on the USF that the FCC considers in its public interest analysis. As did Frontier, the CAD also takes issue with the Chief ALJ's disregard of the Joint Board's recent recommendations, which endorse the public interest analysis advocated by the CAD. Regarding the FCC's purported review of the impact on the USF of individual ETC applications, the FCC made clear it must weigh numerous factors including the impact of multiple designations on the USF. In light of the size of the high-cost portion of the USF (\$32 billion annually), very few individual ETC designations would ever have a significant impact. The CAD says analyzing the impact of one carrier's ETC designation on the entire highcost portion of the fund is useless, but that is what the Chief ALJ did. Under her analysis, it would presumably be in the public interest to designate an unlimited number of ETCs in any given area.

The CAD says that rather than base the public interest cost benefit analysis on the absolute individual cost of each ETC, the Commission should adopt the CAD's straightforward relative cost analysis, which considers the number of lines served to receive the absolute level of support for each study area. Rather than look at the population density (as the FCC has done) of the portions of Frontier's Bluefield study area affected as an indirect indicator of cost to serve, the CAD looks at per-loop support levels in these areas. The CAD cites to the Joint Board's recent recommendations to the FCC as support for its approach.

The CAD also responded to the Chief ALJ's discomfort, in light of the Easterbrooke Cellular Corporation case decided the same day⁸, and states that there is nothing "peculiar" about its use of per-line support averaged over a study area rather than focused on a particular wire center. The CAD says the Chief ALJ's distress stems from a fundamental misunderstanding of the importance of study areas for purposes of universal service support and ETC designations and explains its reasons in support thereof.

Second, the CAD declares that the Chief ALJ's suggestion that, as a policy matter, there is no basis to discriminate between carriers as part of the public interest determination is patently inconsistent with Section 214(e)(2) of the Act. The CAD believes this is perhaps the most troubling aspect of the Chief ALJ's decision. The CAD asserts the Chief ALJ is not empowered to question the policies underlying the Act's provisions regarding universal service and ETCs. The Act expressly commands the Commission to choose — to make a public interest determination — whether multiple ETCs should be designated in rural study areas. That public interest determination is not resolved simply because a carrier is certificated by the Commission. The Commission has certificated over 100 competitive LECs. Under the Chief ALJ's reasoning, every single one of these carriers is entitled to ETC status, even in rural areas. The CAD states the Chief ALJ's reasoning makes a mockery of the ETC process and ignores the fact that issuance of a certificate by the Commission imposes no particular obligations upon a carrier, whereas ETC status imposes rigorous obligations.

Third, the Chief ALJ erred in failing to address the CAD's recommendation that Hardy's ETC designation should include its certificated service area in Hardy, Grant and Hampshire Counties. The CAD believes that Hardy's designation should not be limited

⁸Case No. 03-0935-T-PC. There, the CAD recommended Easterbrooke not be designated an ETC in Frontier's Mountain State study area, which receives average support over the study area only slightly higher than the amount of support assigned to the Moorefield wire center under the disaggregation plan.

to the Moorefield exchange, rather it should be designated an ETC in all those exchanges in Frontier's Bluefield study area in which it is certificated. The CAD argues there is no reason Hardy cannot provide competitive service in the additional Frontier exchanges and that the Commission would be spared entertaining the piecemeal ETC applications by Hardy as it introduces service in each exchange. Although the CAD agrees that requiring Hardy to serve the entire Bluefield study area would impose an unreasonable burden on the company, forcing it to serve the geographically contiguous areas where it has already received a certificate would not.

Hardy's Motion for Expedited Decision

On June 8, 2004, Hardy filed a motion for an expedited decision. In support of its motion, Hardy states that continued delay in filing the appropriate petition with the FCC seeking concurrence in the redefinition of the service area causes irreparable harm on Hardy. Hardy discussed the upcoming FCC and Universal Service Administrative Company (USAC) deadlines for eligibility.

Frontier's Reply to the CAD's Exceptions

On June 11, 2004, Frontier filed a reply to the CAD's exceptions. Frontier agrees with the CAD that the Chief ALJ erred in not discussing the Joint Board's recommendations regarding ETC designations. Frontier again addresses the growth in the universal service fund and reiterates the Joint Board recommendations for addressing the problem. Frontier believes the Chief ALJ failed to fulfill the Commission's statutory obligation to make a public interest determination and that this failure flows from the Chief ALJ's refusal to accept Congress' policy decision that not every applicant should be designated an ETC and not every study area should have multiple ETCs.

Frontier reiterates its position that public interest must be evaluated in universal service terms, not competitive terms. Frontier agrees with the CAD that it is appropriate to consider the amount of per-line USF flowing into a study area when evaluating public interest. Frontier disagrees, however, regarding the levels of per-line USF support at which it is not in the public interest to designate additional ETCs. Frontier also asserts the Commission should consider the impact on universal service throughout the study area that would result from reducing the USF receipts of the only ETC that serves the entire

⁹The additional exchanges covered by this proposal would be Wardensville (Hardy County), Petersburg and Maysville (Grant County) and Romney, Augusta, Levels and Capon Bridge (Hampshire County).

area and that at a minimum, any designation should be conditioned on there being no further reduction in USF receipts to Frontier.

As in its exceptions, Frontier again sets forth its arguments against the redefinition of Hardy's service area.

DISCUSSION

Pursuant to the Telecommunications Act of 1996, designation as an ETC is essential for common carriers of telecommunications services to be eligible to receive federal universal service support pursuant to 47 U.S.C. § 254. To be designated as an ETC, an applicant must (1) be a common carrier; (2) offer the services supported by the federal universal service support mechanism under 47 U.S.C. § 254(c), either using its own facilities or a combination of its own facilities and resale, throughout the designated service area; (3) advertise the availability of such services and the charges therefor, using media of general distribution. 47 U.S.C. §§ 214(e)(1)(A)&(B); and (4) offer Link Up and Lifeline services to low-income subscribers. See 47 C.F.R.§§ 54.405 and 54.411.

47 U.S.C. § 214(e)(2) establishes the process to designate eligible telecommunications carriers as follows:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

The supported services which the ETC applicant must provide are 1) voice grade access to the public switched telephone network; 2) local usage; 3) dual-tone multi-frequency (DTMF) signaling or its functional equivalent; 4) single party service or its functional equivalent; 5) access to emergency services; 6) access to operator services; 7)

access to interexchange services; 8) access to directory assistance; and 9) toll limitation for qualifying low-income customers. See 47 C.F.R. § 54.101(a). The applicant also must advertise the availability of these services throughout its service territory. If the incumbent local exchange carrier is a rural telephone company, the applicant seeking ETC status also must demonstrate that designating it as an ETC is in the public interest.

The Public Service Commission adopted general criteria for the advertising requirement in its Order of May 4, 2001, in Case No. 00-1656- T-PC, Gateway Telecom, LLC, dba Stratus Wave Communications, as follows:

- 1. The carrier must advertise in media targeted to the general residential market throughout its service area;
- 2. Such advertising should be placed in media substantially similar to the media in which the serving incumbent LEC advertises its services in the particular service area. This may mean newspaper or local magazine advertisements where the incumbent advertises its services in such publications, or use of broadcast media (radio or television) where the incumbent uses such media;
- 3. The carrier is required to maintain an Internet site where members of the public can obtain information regarding its services and rates; and
- 4. The carrier is required to advertise its services at least quarterly throughout the service areas for which it has been designated an ETC.

The FCC's regulations on the service area of an ETC are contained in 47 C.F.R. § 54.207, as follows:

- (a) The term service area means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.
- (b) In the case of a service area served by a rural telephone company, service area means such company's "study area" unless and until the Commission [the FCC] and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section

- 410(c) of the Act, establish a different definition of service area for such company.
- (c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.
 - (1) A state commission or other party seeking the [FCC's] agreement in redefining a service area served by a rural telephone company shall submit a petition to the [FCC]. The petition shall contain:
 - (i) The definition proposed by the state commission; and
 - (ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

Within 14 days after receiving the state commission's redefinition proposal, the FCC will issue a public notice of the proposal. 47 C.F.R. § 54.207(c)(2). The FCC then has 90 days within which to decide whether to initiate a proceeding regarding the proposal; if the FCC fails to initiate a proceeding within 90 days after the release of its public notice, the state commission's proposal is deemed approved and may take effect according to state procedure. 47 C.F.R. § 54.207(c)(3). If the FCC decides to initiate a proceeding, then the state's redefinition will not take effect until the two agencies agree on a definition. *Id*.

Public Interest Analysis

It is undisputed that Hardy offers and advertises each of the supported services, as well as Lifeline and Link Up, in Moorefield. Therefore, since Frontier is an RTC and in

accordance with 47 U.S.C. § 214(e)(2), we are faced with whether designating Hardy as an ETC in Frontier's areas is in the public interest. This issue has been and continues to be the most debated of all in this case. We conclude, as did the ALJ, that Hardy has met its burden of proof and that such designation is in the public interest.

We note our agreement with Frontier's argument that competition alone is an insufficient basis to support a finding of public interest. Although a specific definition of "public interest" has never squarely been addressed, we believe this to be a fact specific analysis. We have considered whether the benefits of designating Hardy as an ETC in Frontier's areas outweigh any potential harms. In doing so, we considered numerous factors including, but not limited to, the benefits of competitive choice, differences in service offerings, differences in service availabilities, commitments regarding quality of service, commitments regarding providing service upon request and agreements to a level of regulation greater than that imposed by the FCC and other states.

We acknowledge the CAD's arguments with respect to its proposed public interest analysis, namely the consideration of the per loop support by study areas. We recognize that the CAD, under such analysis, determined it was in the public interest to designate Hardy as an ETC. While we will not adopt the CAD's approach at this time, we believe that it is a valid attempt to apply some objective measure to the public interest analysis and should be considered in future cases. However, we note that there are several implications and potentially conflicting outcomes of the CAD's "bright line" for determining when ETC status for competing carriers is contrary to the public interest that must be further developed before we adopt any "bright line" objective test.

We acknowledge that one argument in support of the CAD per loop support "bright line" is that the public interest may be best served when competition in an extremely high cost study area comes from technology that is innovative and/or lower in cost than the incumbent high cost technology. However, high cost support that is based on the incumbent's high cost technology may encourage replication of such costly investment. This replication may not be desirable. Therefore, the prospect of this outcome may tend to support the CAD's suggested finding that providing ETC status in an exceptionally high cost study area would not be in the public interest. On the other hand innovative, lower cost technology may be available, but not at a cost so low as to be at or below the net (after high cost support) cost to the incumbent. Under this scenario, to deprive the new technology of any support at all creates a non-level playing field and may stifle the new technology.

A second, and perhaps more important, consideration for not adopting the CAD's per line support test at this time is the methodology currently used for administration of the high cost fund. We can appreciate the CAD's position as it relates to potential impact on the incumbent carrier in extremely high cost study areas. The incumbent has made significant investments to provide extended service throughout its service area. When such investment in some wire centers is so costly as to require large payments from the federal fund to support universal service, then loss of customers to subsidized competing carriers may have significant impacts on remaining incumbent customers in both high cost and low cost wire centers if there is a comparable loss of high cost support. Furthermore these impacts are much greater as the per loop costs increase. However, at the present time, the methodology for administration of the federal high cost fund is such that the incumbent will not lose high cost support if it loses customers to a competing carrier. Accordingly, the potential for an outcome that is contrary to the public interest when competing carriers receive ETC status in extremely high cost study areas will not occur under the present funding procedures. As we explain below, we are authorizing ETC status for Hardy only under the current methodology for administration of the federal high cost fund. If this methodology changes, then we shall reconsider the public interest of ETC designation.

For the numerous reasons discussed by the Chief ALJ, we find the public interest will be served by Hardy's ETC designation in the Moorefield exchange. We also believe that public health and safety would benefit in situations where wire line service is unavailable.

Anti-competitive concerns were also considered, including the impact of the designation on the USF. We acknowledge the Joint Board's recommendations concerning the process for designation of ETCs and the rules regarding high-cost universal service support¹⁰ and recognize that the impact on the fund is a significant concern and a factor to be considered. We agree with Frontier and the CAD that the Chief ALJ's conclusion, that the impact of the individual ETC petition on the USF is to be considered, is erroneous. On the other hand, we agree with the Chief ALJ's statement that while Frontier's speculations as to the impact upon and the future of the USF fund may be true, it may be true that Congress may decide the USF factor will also be assessed against intrastate telecommunications revenues. We also agree it may be possible that, over the course of the next few years, any number of different mechanisms may be proposed and ultimately adopted by the FCC and/or Congress or even-the states, which would eliminate or mitigate the worst case scenario proposed by Frontier.

¹⁰See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Recommended Decision, FCC 04J-1 (rel. Feb. 27, 2004).

On June 8, 2004, the FCC issued a Notice of Proposed Rulemaking, seeking comments on the Joint Board's recommendations. Also in June, the FCC asked the Joint Board on Universal Service to review the Commission's rules relating to the high-cost universal service support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the five-year plan adopted in the previous *Rural Task Force Order*, particularly asking for recommendations on a long-term universal service plan that ensures that support is specific, predictable, and sufficient to preserve and advance universal service. ¹²

We recognize and share in the concerns regarding the overall impact to the fund through the designation of additional ETCs in rural carriers' service areas, however, the issue is being addressed at the federal level. While Frontier's assertions regarding the fund have merit, they do not warrant rejection of Hardy's petition at this time. We acknowledge that the outcome of the federal proceedings could affect the ETC designation process, as well as the support that ETCs may receive in the future. However, projections regarding future changes are only speculative at this time. Under the current law, we conclude that Hardy's designation as an ETC would be in the public interest. Nevertheless, with knowledge of the ongoing federal proceedings, we also conclude it is reasonable to make Hardy's designation subject to review, if and when the federal rules and regulations change.

In its exceptions, Frontier reiterated the four conditions it proposed in this case, as quoted above, should ETC designation be granted in this. We decline to adopt the conditions, as proposed. However, there are additional requirements, two of which are similar in nature to those proposed, which we will impose upon Hardy. Those will be stated more fully later in this Order. We believe that the conditions, as well as the annual re-certification process, are sufficient to protect the public interest.

¹¹See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 04-127 (rel. June 8, 2004).

¹²See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order, FCC-04-125 (rel. June 28, 2004).

Designated Service Area Analysis

As Hardy's ETC designation is in the public interest, we must determine whether it is appropriate to redefine Frontier's service territory for the purpose of this proceeding. As explained in the Recommended Decision, the Chief ALJ granted Hardy ETC status in the Moorefield exchange of Frontier's Bluefield study area, with the requirement that Hardy provide service throughout all of the Moorefield exchange, either through its own facilities or a combination of its own and Frontier's facilities. In her analysis, the Chief ALJ addressed Frontier's arguments that Hardy should serve the entire Bluefield study area and that Hardy is attempting to cream skim Frontier's territory.

With regard to the redefinition process, we reject Frontier's analysis. 47 C.F.R. § 54.207, as set forth above, states that a "service area means such company's 'study area' unless and until the Commission [the FCC] and the states, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company." Frontier misreads Section 214(e)(5) in asserting that the Joint Board must be convened each time a service area redefinition request is received. This section merely requires a Joint Board's recommendations be taken into account.

We agree with the Chief ALJ's reasoning with regard to redefinition and will adopt the same. For the reasons set forth in the Recommended Decision, we further concur with the Chief ALJ's determination and analysis that Hardy is not attempting to skim the cream. Finally, we recognize that redefinition in this case is subject to the FCC's concurrence. Thus, Staff should proceed with filing the appropriate petition for such concurrence.

Additional Requirements

While we adopt the ALJ's decision to grant Hardy's petition for ETC designation in the Moorefield exchange, we also find it reasonable to impose certain additional requirements.

A general investigation, Case No. 03-1199-T-GI, was instituted with regard to the establishment of conditions for the granting of ETC status to carriers and the establishment of uniform standards for determining ETC compliance with applicable federal requirements regarding the use of federal USF money provided to them. The general investigation is pending. Should requirements be established as a result of that case which are not imposed at this time, Hardy must comply with any such additional requirements.

Hardy's ETC designation shall be subject to the Commission's annual review of the amount of USF monies received and the use of such funds. Specifically, the usage of the funds will be considered by this Commission as a factor in the annual recertification process.

Chief ALJ's Policy Concerns

We agree with the exceptions of Frontier and the CAD regarding the Chief ALJ's discussion of certain policy issues, as quoted above and set forth in the Recommended Decision at page 30. Of particular concern to this Commission is the Chief ALJ statement that it is

...discomfiting to be expected to pick and choose among carriers whose certificates have equal standing and whose services the Public Service Commission has already concluded are required by the public convenience and necessity. Denial of ETC designation to any ETC applicant in West Virginia means that the Public Service Commission is automatically placing that carrier at a financial and competitive disadvantage relative to the incumbent local exchange carrier and, possibly, previously granted ETC designees, by denying subsequent ETC applicants the same access to Universal Service Funding support as it granted to prior ETC designees or the incumbent providers. Once the Public Service Commission has concluded that the public convenience and necessity require a particular service, the undersigned is hard-pressed to understand under what legal basis...the Commission then makes an affirmative decision to discriminate between those providers by denying access to subsidy funds to some, while granting it to others.

We disagree and reject this portion of the Recommended Decision for the reasons discussed by the CAD and Frontier. Specifically, we agree with Frontier that the public interest considerations in deciding to certificate a carrier are wholly different from those at issue in deciding whether to designate a particular carrier to be an ETC in an RTC's service area. The fact that it may be in the public interest to certificate yet another competitor does not mean it is in the public interest to designate that carrier an ETC. We also agree with the CAD that the Chief ALJ cannot override Congress' policy decision that not every provider in RTCs' areas will get USF money (i.e. it must be in the public interest) and that the public interest determination is not resolved just because a carrier

is certificated. Thus, the CAD and Frontier's exceptions will be granted to the extent they address this issue. Nevertheless, rejection of the ALJ's language does not change the outcome of the decision.

Additional Issues

Regarding the CAD's Proposed Additional Designation

On exception, the CAD complains that the Chief ALJ erred in failing to address the CAD's recommendation that Hardy's ETC designation should also include its certificated service area in Hardy, Grant and Hampshire Counties. The CAD believes there is no reason Hardy cannot provide competitive service in the additional Frontier exchanges. Although the Commission appreciates the CAD's concern with its being "spared entertaining the piecemeal ETC applications by Hardy as it introduces service in each exchange," the fact remains that Hardy petitioned only for ETC designation in the Moorefield exchange. Thus, the CAD's exception on this issue is denied.

Regarding Compliance with W. Va. Code § 24-2-11

We note that by Recommended Decision in Case No. 01-0765-T-CN (entered Sept. 27, 2001; final Oct. 17, 2001), Hardy was granted a certificate of convenience and necessity to provide facilities-based local exchange telecommunications services in those portions of Grant, Hampshire, Hardy and Pendleton Counties. It was further ordered, however, that the authority granted "does not constitute approval to construct specific facilities for the provision of telecommunications services and that, in the event Hardy develops a plan for constructing facilities for the provision of telecommunications services in the New Area in the future, it must provide the Commission with complete details thereof and obtain consent and approval thereof prior to construction."

In addition, pursuant to W. Va. Code § 24-2-11, no public utility "shall begin the construction of any plant, equipment, property or facility for furnishing any of the services enumerated in section one . . ., article two of this chapter . . . except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the public service commission a certificate of public convenience and necessity"

We are unaware that Hardy has ever filed for a certificate for construction, as required in accordance with that above. We take this opportunity to note to Hardy that should construction occur in the future, which is not the ordinary extension of an existing system, permission must first be obtained from this Commission.

FINDINGS OF FACT

- 1. On March 3, 2003, Hardy filed a petition, pursuant to Section 214(e)(2) of the Act, requesting designation as an ETC for the receipt of support from the federal universal service program only in Frontier's Moorefield exchange, in Frontier's Bluefield study area.
 - 2. On April 25, 2003, this matter was referred to the ALJ Division.
- 3. A Recommended Decision was entered on May 14, 2004, granting Hardy's petition for ETC designation in the Moorefield Exchange. The Chief ALJ conditioned the designation upon the following: 1) Hardy shall serve the entire Moorefield exchange, either through its own facilities or a combination of its own and Frontier's facilities; 2) Hardy shall comply with the advertising requirements established in this Commission's Gateway decision; and 3) Hardy shall comply with any other restrictions or requirements imposed upon ETC designees in Highland Cellular. The Chief ALJ also ordered Staff to file the appropriate petition with the FCC, within 60 days, seeking concurrence in the redefinition of Hardy's service area for ETC purposes as being the entirety of Frontier's Moorefield exchange.
- 4. On June 1, 2004, Frontier filed exceptions to the Recommended Decision, stating that it does not dispute that Hardy offers and advertises the services supported by universal service, as well as Lifeline and Link Up in Moorefield.
- 5. Frontier disputes whether designating Hardy an ETC in Frontier's study area is in the public interest and whether Hardy should be relieved from serving the entirety of Frontier's Bluefield study area.
- 6. The CAD filed exceptions to the Recommended Decision on June 1, 2004. While the CAD does not object to the Chief ALJ's determination that Hardy should be designated an ETC in Frontier's Moorefield wire center, the CAD takes exception to certain of the Chief ALJ's conclusions.

...

- 7. On June 8, 2004, Hardy filed a motion for an expedited decision.
- 8. On June 11, 2004, Frontier filed a reply to the CAD's exceptions.

CONCLUSIONS OF LAW

- 1. We disagree with and reject the Chief ALJ's discussion of certain policy issues, as quoted above and set forth in the Recommended Decision at page 30 (policy discussion). Frontier's and the CAD's exceptions will be granted with respect to this issue.
- 2. The CAD's public interest analysis, namely the consideration of the per loop support by study areas, should not be adopted at this time for the reasons discussed hereinabove.
- 3. It is reasonable to adopt the ALJ's finding and reasons in support thereof, as set forth in the Recommended Decision, that designating Hardy is in the public interest.
- 4. 47 C.F.R. § 54.207 does not require that the Joint Board must be convened each time a service area redefinition request is received. This section merely requires a Joint Board's recommendations be taken into account.
- 5. It is reasonable to adopt the ALJ's finding and reasons in support thereof, as set forth in the Recommended Decision, that Hardy's service area for ETC purposes should be defined as the Moorefield exchange.
- 6. In accordance with 47 C.F.R. § 54.207, FCC concurrence must be obtained regarding the redefinition of service areas. Accordingly, Staff should file the appropriate petition seeking such concurrence.
- 7. Given the manner in which the USF currently operates, the proposition that the impact of individual ETC petitions on the USF is to be considered in determining this particular application, is not significant.
- 8. While the impact to the USF through the designation of additional ETCs in rural carriers service areas is a concern to be considered, the issue is being addressed at the federal level and does not warrant rejection of Hardy's petition at this time.
- 9. With knowledge of the ongoing federal proceedings, it is reasonable to make Hardy's designation subject to review, if and when the federal rules and regulations change.

- 10. In addition to the conditions set forth in the Recommended Decision, it is reasonable to require Hardy to comply with additional requirements, including the following: Hardy shall comply with any additional requirements which may be established in Case No. 03-1199-T-GI, which is now pending, and Hardy shall submit to this Commission's annual review of the amount of USF monies received and the use of such funds. Specifically, the usage of the funds will be considered by this Commission as a factor in the annual re-certification process.
- 11. It is reasonable to deny the CAD's proposal that Hardy's ETC designation should also include Hardy's certificated service area in Hardy, Grant and Hampshire Counties.
- 12. Hardy is required, pursuant to prior Commission order and W. Va. Code § 24-2-11, to obtain a certificate for construction which is not an ordinary extension of an existing systems

ORDER

IT IS, THEREFORE, ORDERED that Citizens Telecommunications of West Virginia dba Frontier Communications of West Virginia's exceptions are granted only to the extent set forth in the Discussion and Conclusions of Law. The remainder of Frontier's exceptions are denied.

IT IS THEREFORE ORDERED that the Consumer Advocate Division's exceptions are granted only to the extent set forth in the Discussion and Conclusions of Law. The remainder of the CAD's exceptions are denied.

IT IS FURTHER ORDERED that the portion of the Recommended Decision which suggests that, as a policy matter, there is no basis to discriminate between carriers as part of the public interest determination, is hereby rejected.

IT IS FURTHER ORDERED that the remainder of the Recommended Decision, entered on May 14, 2004, is hereby adopted and the following additional conditions are imposed:

 Hardy Telecommunications Inc. shall comply with any additional requirements which may be established as a result of Case No. 03-1199-T-GI, which is now pending; and • Hardy Telecommunications Inc. shall submit to this Commission's annual review of the amount of USF monies received and the use of such funds. Specifically, the usage of the USF funds will be considered by this Commission as a factor in the annual re-certification process.

IT IS FURTHER ORDERED that Hardy Telecommunications Inc.'s ETC designation, as granted herein, shall be subject to review if and when the federal rules and regulations are modified by the Federal Communications Commission.

IT IS FURTHER ORDERED that within sixty (60) days of the date of Order, Commission Staff shall file the appropriate petition with the Federal Communications Commission pursuant to Section 214(e) of the Communications Act of 1934, as amended, seeking FCC concurrence in the redefinition of Hardy Telecommunications Inc.'s service area for eligible telecommunications carrier purposes as being the Moorefield exchange.

IT IS FURTHER ORDERED that within the same sixty-day period, the Commission Staff shall provide to the Federal Communications Commission and the Universal Service Administrative Company a certified copy of this Order designating Hardy Telecommunications Inc. as an eligible telecommunications carrier for the Moorefield exchange.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States Certified Mail, return receipt requested, and upon Commission Staff by hand delivery.

TBS/ljm 030305ca.wpd

A True Copy, Teste:

Sandra Squire C Executive Secretary

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA CHARLESTON

Entered: May 14, 2004

CASE NO. 03-0305-T-PC

HARDY TELECOMMUNICATIONS, INC.

Petition for consent and approval for Hardy Telecommunications, Inc., to become an eligible telecommunications carrier.

RECOMMENDED DECISION

PROCEDURE

On March 3, 2003, Hardy Telecommunications, Inc. (Hardy)¹, filed a petition with the Commission, pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act),² seeking designation as an Eligible Telecommunications Carrier (ETC), thereby making it eligible to receive universal service support and to offer services that are supported by federal universal support mechanisms, either using its own facilities or a combination of its own facilities and the resale of another carrier's services. Hardy seeks an ETC designation for the Moorefield service area of Citizens Telecommunications Company of West Virginia, dba Frontier Communications of West Virginia (Citizens or Frontier), a rural telecommunications company (RTC), in Hardy County, West Virginia.

¹By Recommended Decision dated September 27, 2001, in Case No. 01-0765-T-CN (Final October 17, 2001), Hardy Telecommunications, Inc., was authorized to provide facilities-based local exchange telecommunications services within those portions of Grant, Hampshire, Hardy and Pendleton Counties, West Virginia, not currently served by either Spruce Knob Seneca Rocks Telephone, Inc., or Hardy Telecommunications, Inc. Hardy's Local Exchange Services Tariff was approved by Commission Order dated December 27, 2002, in Case No. 02-1925-T-T and its Intrastate Access Tariff was approved by Commission Order dated December 27, 2002, in Case No. 02-1924-T-T.

²Different filings and/or testimony will refer to either the amended Communications Act of 1934 or the Telecommunications Act of 1996 (TA-96) as the Act. The <u>Code</u> sections at issue herein were part of TA-96, which amended the Communications Act of 1934.

Hardy stated that it has commenced the provision of local exchange services pursuant to its certification and an Interconnection Agreement by and between it and Citizens' through the use of its own facilities and the resale of Citizens' services. Hardy is currently providing local exchange service in Citizens' Moorefield service area. In fact, it had just begun offering service in January 2003 and currently has approximately twenty (20) customers and thirty (30) access lines, 100% provisioned over its "overbuilt" network facilities.

Hardy stated that it meets and exceeds the criteria established by the Act for designation as an ETC which are as follows, to-wit:

- a) Hardy must be a common carrier;
- b) Hardy must offer or be capable of offering the nine (9) services supported by the universal service mechanisms;
- c) Hardy must offer these services throughout the designated service area or it must commit to so offer those services; and
- d) Hardy must advertise the availability of these services and their charges or its must agree to so advertise these services. See, 47 C.F.R. §54.201.

Finally, Hardy must offer Link-Up and Lifeline services as part of its service offerings to low-income subscribers. See, 47 C.F.R. §§ 54.405 and 54.411.

Hardy went on to state that, because it meets and/or exceeds the criteria listed above, it believed designation as an ETC is in the best interest of the residents and businesses in Moorefield. Hardy's service offerings include lower prices and a variety of attractive service packages and choices and it has deployed new technology to better serve the customers in Moorefield. Its Moorefield deployment includes three (3) strategically placed fiber optic cable-fed digital loop carriers which have been placed to allow for shorter "last mile" loop lengths to customer locations. The "last mile" loops consist of new copper cable,

 $^{^{3}}$ See, Case No. 02-1704-T-PC (December 13, 2002)

The Federal Communication Commission (FCC) has identified the 9 services that are supported by Federal universal service support mechanisms as: (1) voice grade access to the public switched network; (2) local usage (i.e., a prescribed amount of minutes of use of exchange service provided free of charge to end users; (3) dual tone multifrequency (DTMF) signaling or its functional equivalent; (4) single party service or its functional equivalent; (5) access to emergency services, including access to 911 and E911 services, to the extent local governments in an eligible carrier's service area have implemented 911 or E911 systems; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance service; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. \$54.101(a)(1)-(9).

which allows for higher data throughput and less trouble/maintenance. According to engineering estimations, the maximum loop length in Moorefield will be no more than 6,000 feet. According to Hardy, its deployment of new fiber optic fed switching equipment, along with new copper cable to the customer location (essentially a new network), is superior to Citizens' network and is in the best interest of customers in Moorefield. Hardy also stressed that it makes a point of offering oneon-one customer service to those customers who appreciate special attention by maintaining a local presence with a business office located Hardy also stated that it has initiated an extensive in Moorefield. advertising campaign promoting the availability of its services in Moorefield. Hardy advertises via radio stations, newspapers, billboards and sales brochures and will extend this advertising effort as it initiates telecommunications services in other areas authorized by the An affidavit, attached to the petition as Exhibit 1 from Commission. Dwight E. Welch, General Manger, described the services currently offered by Hardy. Attached to the affidavit were promotional materials currently deployed, utilized, published or broadcast by Hardy in the West Virginia marketplace in and around Moorefield, Hardy County.

Hardy concluded by stating that consumers in non-RTC areas, as well as in other parts of West Virginia, are entitled to a choice among technologies and providers through which they receive services supported by the federal and any applicable state universal service high-cost support programs. Hardy asserted that it will provide high-quality, reliable "universal service" of equal or better quality and reliability than the service offered by other competing wireline carriers. Finally, according to Hardy, by designating it as an ETC, the Commission will further engender competition among carriers providing the services supported by the federal universal service high-cost support programs. Competition will benefit consumers in terms of service choices and packages.

On March 17, 2003, Citizens filed a petition to intervene in this proceeding and to raise objections to Hardy's petition. In support of its petition, Citizens stated:

- (1) It is an Incumbent Local Exchange Carrier (ILEC) providing service to more than 150,000 access lines in the State of West Virginia. Citizens' ILEC territory includes the Moorefield, West Virginia, service area within which Hardy seeks ETC status;
- (2) Citizens faces fierce competition from Hardy, which is both a Competitive Local Exchange Carrier (CLEC) in Citizens' Moorefield territory and a Telephone Cooperative acting as an ILEC in its adjoining territory. Hardy as a CLEC provides service to Citizens' former customers through the use of a central office switch and physical loop facilities that Hardy owns. As a result of this network architecture, Hardy does not require collocation in any of Citizens' central offices, and merely needs to attach its outside plant to Citizens' poles and to exchange traffic on a switch-to-switch basis with Citizens. Hardy currently provides local business services using its own switching and loop facilities in Citizens' territory;

- (3) Hardy is certificated by the Commission as a CLEC in portions of Grant, Hampshire, Hardy and Pendleton Counties, West Virginia. Hardy's request for ETC status covers a proposed service area within Hardy County that is only a small portion of its certificated territory and that is an even smaller portion of Citizens' West Virginia territory;
- (4) Hardy does not satisfy the conditions for ETC status in Section 214(e) of the Telecommunications Act. In particular, Hardy proposed a designation of ETC status based on a small and low-cost service territory, the designation of which would be contrary to the public interest, convenience and necessity and therefore in violation of Section 214(e)(2);
- (5) For ILECs other than rural carriers, the Telecommunications Act does not prescribe what service areas are appropriate for ETC certification. Section 214(e)(5) defines "service area" as "a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms." Section 214(e)(2) requires that the State commission's designation of a service area be "consistent with the public interest, convenience and necessity". Under this statute, a CLEC does not have the ability to dictate the scope of a service area to a State commission, and in this proceeding the Commission must find that any service area that it designates is consistent with the public interest, convenience and necessity;
- (6) Hardy proposes to limit its ETC status, and, therefore, its requirements to advertise and provide its services, to a small, compact geographic area. Section 214(e)(1) requires an ETC to offer supported services "throughout the service area for which the designation is received." Hardy makes no claim that it provides supported services anywhere other than Citizens' Moorefield area. By limiting its application to the Moorefield area, Hardy is attempting to enlist the Commission's aid in a classic example of "cream skimming." Under 47 C.F.R. §54.201(a), an ETC receives the same Universal Service funding that the ILEC would receive for the customers that the ETC takes. If the CLEC successfully convinces the State Commission to define an ETC "service area" as a compact, relatively lowcost area, the CLEC reaps the benefit of USF funding computed on the basis of Citizens' costs across its entire West Virginia study area, which includes large areas of high-cost and sparsely populated territories;
- (7) Hardy's request to use the Moorefield area as its ETC "service area" is different only in degree, not in kind, from a cellular carrier seeking the designation of a narrow strip of Interstate highway as its service area, or another CLEC seeking the designation of a single business park or shopping center as its service area;
- (8) The designation of Moorefield as an ETC "service area" for Hardy would set a dangerous precedent and would damage the

public interest, convenience and necessity in the following respects:

- (a) Competitive carriers such as Hardy would be motivated to serve only low-cost, densely populated areas, to the detriment of competition everywhere else. They would have no motivation to move into the more costly territories;
- (b) Competitive carriers such as Hardy that "cream skim" small, low cost areas would receive larger USF draws than warranted by their costs, thus leading to the early exhaustion of USF funding, a need for substantial increases in the USF surcharges that all customers must pay, or both;
- (c) Competitive carriers such as Hardy would be able to underprice ILECs such as Citizens unfairly as a result of the unwarranted USF draw. In effect, the remaining ILEC customers would be required through their USF contributions to cross-subsidize the CLEC competitors such as Hardy; and,
- (d) ILECs subject to this unfair competition would lose revenue and profits well in excess of any cost savings, making it more difficult to obtain funding to invest in advanced services for their remaining customers and ultimately leading to rate increases for their remaining customers; and,
- (9) Because Hardy has already installed its facilities in the Moorefield area, it cannot claim that its receipt of USF funding based on this limited, low-cost territory is a public convenience or necessity. Instead, Hardy's proposed creamskimming would only provide a windfall to Hardy at Citizens' expense.

On March 20, 2003, the Consumer Advocate Division of the Public Service Commission (CAD) filed a petition to intervene in this proceeding. The CAD stated that it is required by statute and rule to represent the interests of residential ratepayers in utility rate cases and related proceedings and that Hardy's petition for designation as an ETC constitutes a proceeding with the potential for adverse effects on ratepayers in West Virginia.

On April 9, 2003, Staff Attorney Patrick W. Pearlman filed an Initial Joint Staff Memorandum. A Utilities Division Initial Recommendation, dated March 4, 2003, from Dannie L. Walker, Technical Analyst, Utilities Division, was attached thereto. Mr. Pearlman initially noted that, since Hardy seeks designation as an ETC in areas served by rural telephone company (RTC), namely Citizens, Commission Staff anticipated that the necessity for finding that the "public interest" would be served by designating Hardy as an ETC, as required by Section 214(e)(2) of the Act, would be its primary focus in this proceeding. Mr. Pearlman next noted that, in earlier proceedings before the Commission requesting an

ETC designation, the Commission has made it a requirement that carriers seeking such designation publish notice of their petitions in the service territory in which such designation is sought. See, e.g., Gateway 2001 Commission Order). Case No. 00-1656-T-PC (May 4, Accordingly, it was recommended that the Commission direct Hardy to publish notice of its petition for designation as an ETC in a newspaper of general circulation in Hardy County, making due return of proper proof of such publication within sixty (60) days thereof. Next, Commission Staff recommended that the petitions of Citizens and the CAD to intervene in this proceeding be granted. Commission Staff also stated that, upon completion of its investigation into Hardy's petition, it would file a final recommendation herein in a timely manner. In the interim, referral of this matter to the Division of Administrative Law Judges for further disposition was recommended.

By Order dated April 25, 2003, the Commission referred this matter to the Division of Administrative Law Judges for further disposition, with a decision due date of November 21, 2003. The Order also granted the petitions of Citizens and the CAD to intervene in this proceeding and directed Hardy to publish the Notice of Filing attached thereto as a Class I publication in a qualified newspaper of general circulation in Hardy County and file an affidavit of publication within thirty (30) days of such publication.

On May 12, 2003, Hardy filed an affidavit of publication reflecting that it had published the Notice of Filing regarding its ETC petition as required. No other petitions to intervene or protests have been filed.

By Procedural Order issued on October 27, 2003, the undersigned noted that Commission Staff had not yet filed its substantive Final Joint Staff Recommendation in this case, although the same had been due on or before Monday, June 2, 2003. The undersigned also expressed the opinion that the principle issue in this case, i.e., Citizens' objection to the designation of Hardy as an ETC in an area smaller than Citizens' entire service area, was currently pending before the Commission in Case No. 02-1453-T-PC, Highland Cellular, Inc. Additionally, the basic public interest issue of designating ETCs in areas served by rural telephone companies (RTCs) was also pending before the Commission in that proceeding and the undersigned stated that she saw little point in relitigating those issues in this case. The undersigned also expressed the opinion that the FCC Report and Order in FCC 97-157, In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order released May 8, 1997, established that any universal service support that Hardy would receive from serving the Moorefield area only would be based solely upon Citizens' cost to serve the Moorefield area, and not Citizens' cost to serve its entire service territory. Thus, it would appear that Citizens' concerns regarding cream-skimming were without foundation.

The undersigned gave the parties to this proceeding ten days from the date of the Order to indicate which of the following options they preferred for the resolution of this case: (1) stipulate that, if the Public Service Commission upholds the Recommended Decision in the Highland Cellular proceeding, Hardy also would be entitled to designation as an ETC in Citizens' territory; (2) proceed to litigate this matter on

a fully litigated basis, in spite of the pendency of the two issues in this proceeding before the Commission in the <u>Highland Cellular</u> proceeding, which would require an extension of the decision due date; or (3) hold this case in abeyance pending the issuance of the Commission's decision in the <u>Highland Cellular</u> proceeding, which also would require an extension of the decision due date. The parties were also invited to point out any errors in the discussion of the FCC Report and Order cited in that Order.

On November 6, 2003, the CAD⁵ filed a joint response to the Procedural Order on behalf of the CAD, Hardy and Citizens. According to the joint response, in light of the Procedural Order, the parties have engaged in various discussions regarding how best to proceed. While the parties agreed that a number of the issues relevant to Hardy's ETC petition could be resolved by stipulation, there are several issues that are not identical to those being considered by the Commission in the Highland Cellular proceeding, regarding which the parties may wish to conduct discovery and that may warrant development at hearing, including the CAD's proposed benchmarking standard; the fact that the wire centers in Citizens' service territory in which Hardy seeks ETC status are not the same as those for which Highland Cellular sought ETC status and there may be different considerations relating to Hardy's ability to serve those wire centers; and the fact that Hardy, unlike Highland Cellular, is not limited by regulation from building its own network using its preferred technology outside of the area for which it seeks to be designated as an ETC. The parties also stated that, because of the differences, the parties do not wish to agree to a settlement that rests entirely on the Highland Cellular proceeding and the parties do not wish to wait for a Commission ruling on the public interest issue in the Highland Cellular case, since that will not address the CAD's benchmarking proposal, nor do the parties wish to defer that proposal to the ongoing general investigation. The parties wish to litigate this case, but they are seeking to negotiate a stipulation that will narrow the issues that may have to be addressed. The parties also indicated that they intended to file a motion seeking an extension of the decision due date and proposing a procedural schedule no later than November 12, 2003.

On November 6, 2003, Citizens filed an individual additional response to the Procedural Order, disputing some of the discussion of the FCC Report and Order set forth in the Procedural Order of October 27, 2003. Citizens' response argued that the best approach for an ETC application and one that helps advance the goals of universal service would be to require an applicant to serve the entirety of Citizens' Bluefield study area if it wishes to be an ETC at all in that study area.

On November 7, 2003, Staff Attorney Cassius H. Toon filed a Final Joint Staff Memorandum in this proceeding, attached to which was the Utilities Division Final Recommendation prepared by Technical Analyst Dannie Walker. He recommended adoption of the ALJ's first option in the Procedural Order of October 27, 2003, i.e., to stipulate that, if the

⁵The CAD's attorney who filed the petition was Mr. Pearlman, who had transferred from Commission Staff to the CAD in 2003.

Commission upholds the Recommended Decision in the <u>Highland Cellular</u> proceeding, Hardy also would be entitled to designation as an ETC in Citizens' territory. If the parties were not willing to stipulate, he recommended a third option of holding the case in abeyance, pending the issuance of the Commission's decision in the <u>Highland Cellular</u> proceeding. He also recommended that the Final Order in the case require Hardy to comply with any additional conditions or requirements applicable to ETCs generally that are established pursuant to any final Commission Order in Case No. 03-1199-T-GI.

On November 17, 2003, Citizens filed the joint motion to extend the Administrative Law Judge's decision due date to May 14, 2004, and set forth a proposed procedural schedule, which included a deadline for submitting discovery requests and responses to that discovery; dates for filing prefiled direct and rebuttal testimony; and a hearing to be held in January of 2004.

Also on November 17, 2003, Citizens filed a joint motion with the Administrative Law Judge to establish a procedural schedule, requesting adoption of the procedural schedule set forth in the motion to the Commission to extend the decision due date.

On November 18, 2003, Citizens filed a response to the Final Joint Staff Memorandum, objecting to the Staff recommendation and arguing that the <u>Highland Cellular</u> proceeding and the instant proceeding are not sufficiently alike to rely upon that case to decide the Hardy ETC application.

By Commission Order also entered on November 18, 2003, the Commission granted the motion to extend the decision due date and extended the decision due date until May 14, 2004.

By Procedural Order issued herein on December 12, 2003, the above-styled and numbered proceeding was scheduled for hearing to be held in the Moorefield City Building, Council Chambers, 206 Winchester Avenue, Moorefield, West Virginia, at 10:00 a.m., on January 27, 2004, and to continue on January 28, 2004, at the same time and location, if necessary. Additionally, a schedule for filing prepared testimony before hearing and briefs after the hearing was established. Finally, the CAD's benchmarking proposal was removed from this case.

On December 23, 2004, Hardy and Frontier filed prepared direct testimony.

On January 9, 2004, a Joint Motion was filed by three of the parties in this proceeding, requesting an extension of time to file rebuttal testimony for all parties, until January 16, 2004. As cause, the motion indicated that a service problem had occurred with respect to the prefiled direct testimony and, as a result, counsel for Citizens did not receive the direct testimony of Hardy until January 8, 2004, although it had been mailed on December 22, 2003. Accordingly, in order to insure that all parties had sufficient time to review the direct testimony prior to the filing of the rebuttal testimony, it was jointly requested that the extension of time be granted.

By Procedural Order issued on January 12, 2004, the requested extension was granted.

On January 16, 2004, Frontier filed a motion to strike portions of the prefiled testimony of Hardy witness Dwight Welch, on the basis that portions of the testimony constituted legal argument rather than factual testimony.

Also on January 16, 2004, Frontier and the CAD filed prepared rebuttal testimony.

On January 26, 2004, the undersigned was contacted by several of the parties to this proceeding, due to the inclement weather that had been experienced over the weekend in the Northern West Virginia-Virginia-Washington, D.C., area and which was expected to continue through Monday night. At least one party to this proceeding, Frontier, indicated that both its counsel and its witness would be unable to travel on Monday, January 26, 2004, due to the weather.

By Procedural Order issued on January 26, 2004, the first day of the hearing previously scheduled in this proceeding to be held on January 27, 2004, in Moorefield, West Virginia, was cancelled. The Order provided that the hearing would be conducted on one day, Wednesday, January 28, 2004, at 10:00 a.m., in Moorefield, West Virginia. In all other respects, the procedural schedule established in the Procedural Order of December 12, 2003, as amended by the Procedural Order of January 12, 2004, would remain in full force and effect.

On January 27, 2004, counsel for the CAD, Hardy, Frontier and Commission Staff jointly moved the Administrative Law Judge for an order cancelling the hearing to be held on January 28, 2004. According to the motion, in an effort to expedite the processing of this case, the parties had jointly agreed to submit the case to the Administrative Law Judge on the basis of their prefiled testimony, and to forego the hearing scheduled on January 28, 2004, and any cross examination of the other parties' witnesses. The parties agreed that the remainder of the procedural schedule should be retained. Finally, the parties jointly agreed to waive any objections to the other parties' prefiled testimony and to have the testimony marked and admitted into evidence as designated in the motion. The parties reserved the right to note any typographical errors or corrections to their prefiled testimony in their initial briefs.

By Procedural Order issued on January 27, 2004, the joint motion was granted and the matter was submitted without hearing.

On March 2, 2004, Hardy, Frontier and the CAD filed either Initial Briefs or Proposed Orders herein. On March 12, 2004, Frontier and the CAD filed Reply Briefs herein. On March 22, 2004, Hardy filed a letter stating that it would not be filing a Reply Brief.

The prepared testimony will be marked and received in evidence as follows: Hardy's prepared direct testimony of Dwight Welch as Hardy Exhibit 1; Frontier's prepared direct testimony of J. Michael Swatts as Frontier Exhibit 1; Frontier's prefiled rebuttal testimony of Mr. Swatts

as Frontier Exhibit 2; and the CAD's prepared rebuttal testimony of Billy Jack Gregg as CAD Exhibit 1.

EVIDENCE

Hardy filed the prepared direct testimony of Dwight E. Welch, the General Manager of Hardy's CLEC operations, as well as the General Manager of Hardy Telephone Company. According to Mr. Welch, Hardy currently has 270 customers and 300 access lines in Moorefield, 100% provisioned over its own "overbuilt" network. (Hardy Exhibit 1, pp. 1-2). According to Mr. Welch, Hardy believes that it has complied with all the requirements of an ETC and it is asking the Commission to grant Hardy ETC status in Moorefield so that it can start receiving USF funds. (Hardy Exhibit 1, p. 2).

According to Mr. Welch, Hardy meets or exceeds all of the requirements set forth in Section 214 of the Act for carriers to be eliqible for ETC status. Hardy believes that designating it as an ETC is in the best interests of the residents and businesses in Moorefield. Mr. Welch testified that Hardy's service offerings include lower prices than Frontier's and a variety of attractive service packages and choices. Hardy has deployed new technology to serve the customers in Moorefield, including three strategically placed fiber optic cable-fed digital loop carriers which have been placed to allow for shorter "last mile" loop lengths to customer locations. The last mile loop consists of new cooper cable, which allows for higher data throughput and less trouble and maintenance requirements. (Hardy Exhibit 1, pp. 5-6). According to Hardy's engineering estimations, the maximum loop length in its Moorefield system will be no more than 6,000 feet. According to Mr. Welch, Hardy's deployment of new fiber optic cable-fed switching equipment, along with new copper cable to the customer location, makes its network superior to Frontier's and is in the best interest of the Moorefield area. (Hardy Exhibit 1, p. 6).

Mr. Welch explained that Hardy currently maintains a local presence with a business office located in Moorefield at 121 South Main Street. At the Moorefield office, Hardy accepts payments and can set up or modify Customers also have access to product brochures, customer accounts. effective tariffs and customer assistance. Mr. Welch stated that Hardy makes a point of offering one-on-one customer service to those customers who appreciate special attention. Hardy also has initiated an extensive advertising campaign, promoting the availability of its services in Moorefield. Hardy advertises via radio stations, newspapers, billboards According to Mr. Welch, Hardy will extend this and sales brochures. advertising effort as it initiates telecommunications services in other areas authorized by the Commission. Hardy assured the Commission that it is willing to serve all customers in the Moorefield exchange. Exhibit 1, p. 6).

Mr. Welch also testified that, since Hardy had entered the market in the Moorefield exchange, it has seen Frontier improve its own service in Moorefield. Mr. Welch cited as an example that Frontier has now opened up a local business office in response to Hardy's new business office. Frontier has also been running more promotions offering rate reductions.

Mr. Welch does not believe that these things would have occurred without Hardy's presence in the Moorefield exchange, indicating that the introduction of competition in Moorefield was good for the community, even for those customers who did not elect to go with the new competitor. Mr. Welch stated that he did not think anyone could deny that competition was healthy and good for the public. (Hardy Exhibit 1, pp. 6-7).

Mr. Welch responded to the various reasons listed in Frontier's petition to intervene for denying Hardy's request for ETC status. According to Mr. Welch, Frontier's major complaint seems to stem from the fact that Hardy is serving only Moorefield and, by so doing, Hardy is cream skimming by serving only a tightly-knit, densely populated area. Mr. Welch denied the allegation and asserted that Hardy would be serving the entire Moorefield exchange, not just the Town of Moorefield. is ready to comply with any ETC requirements on serving the whole exchange area. Mr. Welch believes that Hardy is exactly the kind of CLEC that the FCC was hoping to see in promulgating its ETC rules. Mr. Welch believes the FCC would be happy to see companies like Hardy investing He pointed out that money in facility overbuilds in rural markets. Moorefield is not a major metropolitan area. The entire area in and around Moorefield is very rural and Hardy is willing and able to serve the entire area. He indicated that the fact that Frontier gets significant USF support for Moorefield is enough to tell you that it is not a low-cost service territory. He noted that, if Moorefield was a highdensity area, Frontier would not be getting USF support. (Hardy Exhibit 1, p. 7).

According to Mr. Welch, the FCC's intent in allowing portable USF support was to try to promote true facilities-based competition. He stated that the FCC has always believed that real competition does not happen until there is a second network alternative for customers. According to Mr. Welch, Hardy is one of the rare CLECs who is willing to invest significant capital to build facilities to serve residential customers. He does not think that anybody who serves residential customers can be accused of cream skimming, because there are no big margins to be had in the residential market. (Hardy Exhibit 1, p. 8).

Mr. Welch also noted that Frontier had implied that Hardy must serve some greater area than the Moorefield exchange in order to be eligible for USF support. He acknowledged that Hardy is certificated to serve several more counties around the Moorefield exchange and Hardy's long-term intention is to serve those areas where it originally received certification. However, a lot of investment will be required to build a second network and Hardy is not going to endanger the entire company by trying to serve all of those areas at once. Hardy intends to slowly expand over the years, as it gains customers, and reinvest new revenues into further expansion. He stated that, just because Hardy has not built a network everywhere yet, does not mean that it cannot be an ETC where it has already started to build. (Hardy Exhibit 1, p. 8).

Mr. Welch also noted that the FCC allowed companies who received USF support to disaggregate the Universal Service Funding by zones related to cost. This disaggregation was allowed at the exchange level and even to zones within an exchange. According to Mr. Welch, by that process, the FCC intended to make Universal Service Support match loop costs. Mr.

Welch believes that, by doing so, the FCC showed a clear intention of allowing a competitor to gain access to Universal Service Support at that same level. He stated that, in the telecommunications industry, service territory has always been looked at in terms of exchanges. An exchange in a rural area like Moorefield is not a small area. It not only encompasses the Town of Moorefield, but also a great deal of rural area surrounding the Town. For a facility overbuilder like Hardy, an exchange is the only sensible area to consider for USF and ETC purposes. Overbuilding even one exchange is a tremendously expensive proposition. If the rule is that a company must overbuild a large area in order to become an ETC, the kind of investment that the FCC and the Public Service Commission would like to see would be discouraged. Mr. Welch thinks that Hardy's willingness to serve the entire Moorefield exchange for now is plenty of territory to justify the granting of ETC status. In the future, as it expands further, Hardy expects to add other exchanges to its ETC designation. He does not see how a facility overbuilder could handle ETC designation any other way. (Hardy Exhibit 1, pp. 8-9).

Mr. Welch noted that Frontier repeatedly referred to Moorefield as some sort of high-density, low-cost territory, but he reiterated that Frontier gets USF support for Moorefield. He testified that Moorefield is a country town and not a pocket of low-cost, high-density customers. (Hardy Exhibit 1, p. 9).

Mr. Welch noted that Frontier was claiming that Hardy could use Universal Service Funding to offer lower prices than Frontier, which Mr. Welch stated was the whole purpose of competition. USF support was supposed to be used in the first place to directly benefit the customers in rural high-cost areas. It was Mr. Welch's hope that Frontier would plow its current USF support back into the rural communities, either in terms of lower rates or improved infrastructure. Mr. Welch promised that, if Hardy obtains USF support, it will plow any revenues it obtains directly back into the community. He stated that, in the end, if Hardy and Frontier are both receiving USF support for the same community, if Hardy offers lower prices, it is because it is more efficient or willing to tolerate lower profit then Frontier. He stated that the USF support does not give Hardy any pricing advantage over Frontier. (Hardy Exhibit 1, pp. 10-11).

Mr. Welch also disputed Frontier's claim that Hardy's "proposed cream skimming" would provide a windfall to Hardy at Frontier's expense. Mr. Welch noted that Hardy operates as a cooperative and has always rolled profits directly back into its communities and to its members. He stated that there is really no such thing has a windfall for a cooperative. Hardy's profits are customer profits which are not shipped out of state like Frontier's profits. Mr. Welch testified that any profits Hardy makes from the CLEC operations will go directly to the CLEC customers who had the faith to join Hardy. (Hardy Exhibit 1, pp. 10-11). Mr. Welch also testified that Hardy would comply with any rules and regulations formulated by the Public Service Commission in the ongoing ETC general investigation pending before the Commission. (Hardy Exhibit 1, pp. 11-12).

Mr. Welch further requested that Hardy's ETC petition not be held until the Commission formulates new rules and regulations after the

general investigation. He noted that, until Hardy is declared an ETC, it cannot obtain Universal Service Funding. Its business plan is counting He noted that, while Hardy has gotten a start in on these funds. overbuilding Moorfield and now has over 270 customers, until it obtains USF support, it will probably not build any further, so its expansion plans are on hold. (Hardy Exhibit 1, p. 12). Mr. Welch reiterated that what Hardy is doing in Moorefield is exactly what the FCC had in mind when it formulated the ETC rule. He argued that the FCC wanted carriers to build duplicate network facilities and understood that such overbuilding would not occur in rural areas unless USF support was available to facilities-based competitors. Mr. Welch noted that there are very few CLECs in the United States who are building networks to get to residential customers. Hardy is not cherry picking or cream skimming. It has long-range business plans to bring additional customers into its cooperative that Hardy thinks make financial sense. (Hardy Exhibit 1, p. 12).

Mr. Welch also pointed out that, no matter what amount of USF support Hardy ultimately receives, Frontier's USF support will not be decreased. It will continue to get its historical level of support at the same time that Hardy gets new USF support. According to Mr. Welch, the consequence of any further delays in its application is that there will be less USF support flowing into the State and certainly less money flowing into Moorefield. (Hardy Exhibit 1, p. 13).

Mr. Welch also objected to delaying a final decision on Hardy's application until a decision is made in the <u>Highland Cellular</u> ETC application pending before the Commission. Mr. Welch testified that the issues in the <u>Highland Cellular</u> case are different from Hardy's issues. Mr. Welch believes that Hardy is different enough from Highland Cellular that the decision in that case will not bear enough resemblance to Hardy's issues to be meaningful. (Hardy Exhibit 1, p. 13).

Frontier filed the direct testimony of J. Michael Swatts, the State Government of Affairs Directors for seven of Frontier's southeastern states, including West Virginia. Mr. Swatts has had an extensive telecommunications career, beginning with GTE and then, following Frontier's acquisition of the GTE properties in 1994, with Frontier. (Frontier Exhibit 1, pp. 2-3).

Mr. Swatts testified that he is familiar with the services offered by Hardy in West Virginia. Hardy is an incumbent local exchange carrier serving portions of Hardy, Grant, Pendleton and Hampshire Counties. is also certificated as a competitive local exchange carrier in the portions of those same four counties in which it is not the ILEC, except for the area served by Spruce Knob-Scenic Rocks Telephone, Inc. In its capacity as a CLEC, Hardy is providing service in Frontier's Moorefield exchange and it has announced its intentions to provide service in Frontier's Wardensville exchange. Mr. Swatts noted that it is Hardy's CLEC operations in Frontier's ILEC service territory that are at issue in (Frontier Exhibit 1, p. 4). Hardy is overbuilding this proceeding. Frontier's network, which means that Hardy is building its own independent wireline network and is not providing service through the use of unbundled network elements (UNEs) purchased from Frontier or through the resale of Frontier's services. Hardy and Frontier exchange traffic on a

switch-to-switch basis pursuant to an interconnection agreement dated August 23, 2002. That interconnection agreement provides that Hardy may purchase UNEs from Frontier and may resell Frontier's services. (Frontier Exhibit 1, pp. 4-5).

Frontier is a local exchange carrier providing service to customers in thirty-four (34) of West Virginia's fifty-five (55) counties. It has three designated study areas, Bluefield, St. Mary's and Mountain State. Frontier is a rural telephone company or RTC in each of those study areas and has filed a Universal Service Fund disaggregation plan for each study area. Exhibit 3 attached to Frontier Exhibit 1 is a table prepared by Mr. Swatts showing the exchanges and counties included within each of the study areas, along with the cost zone of each exchange under the disaggregations plans. Frontier is the incumbent local exchange carrier and carrier of last resort in its three study areas and it has been designated as a eligible telecommunications carrier and receives Universal Service Funds in all three of its study areas. (Frontier Exhibit 1, pp. 5-6).

According to Mr. Swatts, Frontier exceeds the requirements for providing the nine services supported by the Federal Universal Service Fund throughout its three study areas. For example, Frontier provides equal access instead of just the required access to an interexchange carrier. This allows customers to select the long distance carrier they Frontier also provides several calling plans, including wish to use. unlimited local calling for a flat monthly fee within calling scopes defined in accordance with the Commission's long-standing Winfield plan. Frontier also exceeds the requirement to provide some form of toll limitation by offering several options. Customers can choose to block all direct-dialed toll calls or to selectively block other types of toll calls, such as 900 or 976 numbers. Frontier, also offers call screening services, which allow customers to regulate toll charges by blocking incoming collect calls and by preventing third-party billed calls from being charged to their account. Frontier also offers soft dial tone to customers during temporary disconnect periods so they will have access to 911 emergency services. All of Frontier's local exchange services are regulated by the Commission. (Frontier Exhibit 1, pp. 6-7).

Mr. Swatts explained that the Public Service Commission regulates Frontier in a number of ways, including regulating Frontier's rates through an incentive regulation plan (IRP) for Frontier. In each IRP, the Commission adjusts Frontier's rates and requires it to make certain types and amounts of investment in infrastructure. The Commission sometimes requires Frontier to extend existing services or provide new services that Frontier would not otherwise be required to provide, as a condition of an IRP. The Commission also has adopted its Rules and Regulations for the Government of Telephone Utilities, which regulate Frontier's quality of service, impose certain reporting requirement and provide customer protections regarding disconnection of service and other things. The Commission also regulates Frontier through general orders and the tariff process. (Frontier Exhibit 1, p. 7).

Mr. Swatts explained that Frontier voluntarily exceeds the minimum requirement established by the Federal Communications Commission for eligible telecommunications carriers, in some cases because it wants to

provide high quality service to its customers or because it has agreed to do so as a condition of receiving other benefits in an IRP. Because of state regulatory requirements, however, Frontier has no choice but to exceed some of the Federal minimum requirements for eligible telecommunications carriers, such as the requirements to provide equal access and to comply with the Winfield plan. According to Mr. Swatts, all of the regulations and the provision of Universal Service funds to Frontier insure that customers receive a consistently high quality of service at affordable rates. They also assure customers the ability to address service problems quickly and effectively and provide fair treatment of customers. (Frontier Exhibit 1, p. 8).

Frontier's Universal Service Fund receipts effectively reduce the rates that Frontier otherwise would charge its customers. All incumbent local exchange carrier ETCs are subject to the full array of Commission regulations to which Frontier is subject, although the Commission uses rate of return regulation to regulate the rates of incumbents other than Frontier and Verizon. Wireline CLECs also are subject to these requirements, except that the Commission does not regulate their rates. (Frontier Exhibit 1, p. 9).

According to Mr. Swatts, there is some overlap between the area where Hardy is certificated as a CLEC and Frontier's study areas, although Hardy is not certificated to provide service throughout Frontier's study areas. Hardy is certificated as a CLEC in Frontier's exchanges in Maysville and Petersburg in Grant County; in the Augusta, Capon Bridge, Levels and Romney exchanges in Hampshire County; and in the Moorefield and Wardensville exchanges in Hardy County. Hardy is currently providing service only in Moorefield, although it has announced its intention to service Wardensville as well. Hardy is a competitor to Frontier and Frontier has lost a number of customers to Hardy, which is providing a substitute to the service offered by Frontier. (Frontier Exhibit 1, pp. 9-10).

Mr. Swatts is of the opinion that the service offered by Frontier does not satisfy the minimum requirements for being an eligible telecommunications carrier. Hardy has no ability to provide the nine supported services in all of Frontier's Bluefield study area outside of Hardy, Hampshire and Grant Counties. (Frontier Exhibit 1, pp. 10-11).

According to Mr. Swatts, additional ETCs must serve the entirety of an RTC study area. Therefore, Hardy must be capable of providing and must offer and advertise the nine supported services throughout Frontier's Bluefield study area in order to meet the minimum criteria to be designated as an additional ETC in that study area. (Frontier Exhibit 1, p. 11).

Mr. Swatts is of the opinion that it is not in the public interest to designate Hardy as an eligible telecommunications carrier in Frontier's Bluefield study area. Principally, he believes that it make no economic sense to provide universal service support to more than one area and one carrier in Frontier's study areas because those areas are costly to serve and each one qualifies for federal high cost support. According to Mr. Swatts, when a study area qualifies for high cost support, this constitutes an implicit finding that, but for the Universal Service Fund,

quality telephone service would not be available in that area at rates comparable to those charged in urban areas. He believes that, if a study area cannot support even one carrier without Universal Service Funds, it make no economic or policy sense to support additional carriers in that area. He believes this is especially true because the customers ultimately provide the monies to go into the Universal Service Fund for redistribution. (Frontier Exhibit 1, pp. 11-12). According to Mr. Swatts, the fundamental purpose of Universal Service Fund support is to insure that telephone service is available in high cost areas where otherwise there would be no service. That objective has already been achieved. He believes that Universal Service support should not be used simply to foster competition or insure the viability of a competitor. (Frontier Exhibit 1, p. 12).

According to Mr. Swatts, the areas served by Frontier in all three of its study areas are so costly to serve, that, without Universal Service Fund support, Frontier could not maintain its service quality level and rates. Rates would have to rise to a level that few, if any, of its customers would be willing to pay. According to Mr. Swatts, under Frontier's Universal Service Fund disaggregation plan, which targets Universal Service Fund monies to the most costly areas, some of Frontier's wire centers receive over \$100.00 of support per line per month. (Frontier Exhibit 1, pp. 12-13).

Mr. Swatts also testified that Hardy's designation as an ETC in the Moorefield exchange is not in the public interest because, by serving only those portions of the Moorefield exchange where it has built facilities, by focusing on the downtown areas and by not using options such as UNEs and resale to provide service in areas its own network cannot reach, Hardy is engaging in a form of cream skimming. Mr. Swatts testified that the Moorefield exchange overall is in the high cost zone under Frontier's USF disaggregation plan and large amounts of USF support are targeted to that exchange. However, the costs to provide service are not uniform throughout the exchange. Hardy is cream skimming by serving the lowest-cost portion of the exchange, while ignoring the higher-cost portions of the exchange, which gives Hardy a significant windfall. Further, by focusing on the Moorefield exchange, Hardy is avoiding service to the rest of the Bluefield study area, including the other high-cost exchanges and the higher-cost portions of all exchanges served by Frontier in that study area. (Frontier Exhibit 1, p. 13).

Mr. Swatts also denied that the benefits of competitive entry by Hardy were sufficient to support a public interest finding in this case. Universal Service was intended to insure that people in all areas of the nation would have quality telephone service at affordable rates, by providing carriers a method of cost recovery other than user rates. The goal was to insure that telephone service was available where otherwise there would be none because it would cost too much to provide it. While the Telecommunications Act of 1996 did introduce competition and permit additional eligible telecommunications carriers to receive Universal Service Funds, he argued that nothing suggests that Universal Service support is to be used to promote competition. He argued that the Federal Communications Commission is beginning to step away from its previous position that the goal of promoting competition was enough to satisfy the public interest test. (Frontier Exhibit 1, pp. 14-17).

Mr. Swatts again asserted that Hardy should not be granted ETC status in the Moorefield exchange because Hardy does not meet the minimum criteria nor is it in the public interest to do so. He argued, however, that, if the Commission decides to designate Hardy as an eligible telecommunications carrier, it should condition that designation on Hardy: having to reduce rates by the amount of per-line Universal Service Fund monies received, or, in the alternative, use all Universal Service Fund monies received for incremental capital investment or a combination of the two; submit to annual Commission review of how its Universal Service Fund receipts were used, including a review of its infrastructure development plan; and take all necessary steps to provide service to all customers throughout the Bluefield study area who make reasonable requests, by modifying or building out its network or by providing service using resale and the use of unbundled network elements. Further, the designation would exist only as long as the incumbent local exchange carrier's Universal Service Fund receipts are not reduced when an additional eligible telecommunications carrier is designated in its study area(s). (Frontier Exhibit 1, pp. 15-16).

Mr. Swatts testified that these conditions do not create greater burdens on Hardy than those applied to other eligible telecommunications carriers in West Virginia, but, instead, are far less than those sought by Frontier with respect to wireless ETC applications. (Frontier Exhibit 1, p. 16). Since the Commission does not regulate the rates of CLECs, Frontier does not believe the full rate regulation of additional ETCs is critical. However, in order to insure that Hardy does not get a windfall from its ETC designation, Frontier suggested that the Commission require Hardy to reduce its existing rates by the amount of Universal Service support it receives, which will insure that its rates take into account the fact that it is receiving Universal Service Funds. (Frontier Exhibit 1, pp. 16-17). As an alternative, Frontier believes that infrastructure investment is another acceptable use of Universal Service Funds by ETCs. Hardy could use those funds to build out its network. (Frontier Exhibit 1, p. 17).

Mr. Swatts noted that each ETC must annually obtain from the Public Service Commission a certification that it is properly using its Universal Service Fund receipts. This certification must be filed with the FCC and the Universal Service Administrative Company (USAC). If the certification is not filed, the ETC does not receive future USF support. Mr. Swatts believes that this certification will provide the Commission with an opportunity to police and enforce the conditions it imposes upon the use of USF support by Hardy. If necessary, the Commission can revoke Hardy's ETC designation if it found that Hardy is not in compliance with the designation. (Frontier Exhibit 1, pp. 18-19).

With respect to Frontier's suggested condition that Hardy's ETC designation last only for so long as ILEC USF funds are not reduced when additional ETCs are designated in their study areas, Mr. Swatts noted that there have been a number of proposals discussed in the industry to stem what is termed the unsustainable growth in the size of the Federal Universal Service Fund. Among these proposals is a suggestion to reduce the amount of support provided to an ILEC when an additional ETC is designed in its study area. According to Mr. Swatts, such a reduction in USF funding to Frontier would severely limit its ability to maintain

quality services at rates comparable to those charged in urban areas, as it currently does. He believes this will have serious consequences for the provision of Universal Service in Frontier's study areas. He does not believe it is in the public interest to impair the provision of Universal Service in Frontier's rural study areas. He believes it would be especially incongruous to impair Frontier's current ability to provide Universal Service in the name of providing Universal Service. (Frontier Exhibit 1, pp. 18-19).

Frontier does not believe that its conditions create a barrier to entry or have the effect of creating a barrier to entry. Mr. Swatts noted that Hardy is already providing service in Frontier's study area and successfully serving customers. Conditioning Hardy's ETC designation does not prevent or impede it from providing service. He also argued that designating Hardy as an ETC will further burden the Universal Service Fund. (Frontier Exhibit 1, p. 19).

In conclusion, Mr. Swatts testified that the conditions he proposed only reduce, but do not eliminate, the public interest harms that will result from designating Hardy as an ETC in Frontier's study area. Even with those conditions, he believes that it is not in the public interest to designate Hardy as an ETC. Frontier proposed those conditions simply to reduce the harm that will result if the Commission decides to designate Hardy as an ETC in Frontier's study areas. (Frontier Exhibit 1, pp. 19-20).

Frontier also filed rebuttal testimony from its witness Swatts. Mr. Swatts stated that the purpose of his rebuttal testimony is to point out factual errors in Mr. Welch's direct testimony and to rebut that testimony. (Frontier Exhibit 2, p. 1). Mr. Swatts testified that Frontier is not disputing that competition is in the public interest, but does not believe that issues regarding competition are present in this case. Mr. Swatts reiterated that Hardy does not provide and is not capable of providing service throughout Frontier's entire Bluefield study area and, therefore, does not satisfy the minimum requirements for being designated as an additional ETC in that study area. Second, the designation of Hardy is not in the public interest. (Frontier Exhibit 2, p. 2).

Mr. Swatts also disagreed with several of Mr. Welch's assertions regarding the comparative quality and technical aspects of the network Hardy is building in the Moorefield exchange. He also disagreed that Hardy is serving the entire Moorefield exchange. Finally, Mr. Swatts disagreed with Mr. Welch's claims that Hardy is incapable of receiving a windfall because it is organized as a cooperative and is not cream skimming. (Frontier Exhibit 2, p. 3).

With respect to Hardy's network, Mr. Swatts denied that it is superior to Frontier's. He noted that Frontier is using the same technology as Hardy in building its Moorefield network. Fiber connects seven of Frontier's eleven remotes to the central office. Further, properly maintained copper cable will provide reliable high-quality service for years. The fact that Hardy may be using newer cable does not mean that its cable is better. In the end, there is no factual basis to believe that Hardy's network or services are superior to those offered by

Frontier. Mr. Swatts noted that Frontier has invested significant sums to install fiber and remotes far out into the network and continues to upgrade its network as appropriate to insure that customers have access to reliable high-quality services. Further, Hardy does not provide all of the services that Frontier provides, such as caller ID or call waiting, in the Moorefield exchange. (Frontier Exhibit 2, p. 3).

Mr. Swatts also disagreed with other statements made by Mr. Welch regarding technical aspects of Hardy's network or service. With respect to Mr. Welch's claim that Hardy's maximum loop length is 6,000 feet and that Hardy has three remotes in the Moorefield exchange, Mr. Swatts testified that it is physically impossible to serve the entire Moorefield exchange using only three remotes while keeping loop lengths below 6,000 According to Mr. Swatts, Frontier has eleven remotes in the Moorefield exchange which enable it to maintain a maximum loop length of approximately 15,000 feet. He noted that Hardy has no remotes in the northern part of the Moorefield exchange, in the areas of Flats, Old Fields and McNeal. Hardy has also has no facilities for approximately 9.2 miles on Route 220 north of its remote switch near Wal-Mart. Customers off of the main road may be as far as twelve miles from Hardy's Hardy is not purchasing UNEs or reselling service nearest facilities. which would enable it to serve customers not served by its own network. Mr. Swatts estimated that Hardy can serve a maximum of 15% of the land area in the Moorefield exchange and about 30% of the customers with its existing facilities. (Frontier Exhibit 2, p. 4).

With respect to Hardy's cooperative organization form, Mr. Swatts testified that Hardy's form of organization has no impact on whether or not it will receive a windfall if it receives designation as an ETC. A windfall to the organization is still a windfall, regardless of the ultimate beneficiary of the windfall, shareholders, partners or members. (Frontier Exhibit 2, p. 5).

Mr. Swatts also reiterated that Hardy is cream skimming by serving only the most densely populated portion of the Moorefield exchange. noted that Mr. Welch acknowledged in his testimony that Hardy will not build out its network any farther unless it obtains Universal Service Funds. However, there was no guarantee that Hardy would ever receive USF support when it began overbuilding Frontier's network. Hardy's CLEC application did not condition its provision of service throughout the new area for which it sought a certificate upon its receipt of USF support. Nevertheless, Hardy initially overbuilt Frontier's network in the more densely populated areas of the Moorefield exchange because they are relatively low-cost and high-yield areas. Mr. Swatts testified that Hardy is now demanding a "ransom" in the form of USF support based on Frontier's average cost to serve the Moorefield exchange, in order to provide service to the higher cost portions of the Moorefield exchange. According to Mr. Swatts, even though Hardy has the ability to service customers throughout the exchange with little or no up-front investment, by virtue of its interconnection agreement with Frontier, it is refusing to do so. It is also refusing to provide service throughout the entire study area, even though its interconnection agreement with Frontier would enable it to do so if it obtained a certificate of public convenience and necessity to serve the entire study area. (Frontier Exhibit 2, pp. 5-6). According to Mr. Swatts, requiring Hardy to serve the entire Bluefield study area would provide very little risk to Hardy, because it would be using UNEs or resale to provide service to customers that its own network cannot reach. These methods of providing service require practically no investment. The biggest investments required are in back office functions, such as ordering and billing, which Hardy has already firmly established. (Frontier Exhibit 2, pp. 5-6).

Mr. Swatts reiterated that requiring Hardy to provide service throughout the entire Bluefield study area does not create an undue barrier to entry or place an undue burden on Hardy, since it is fully capable of providing that service using resale and UNEs. Hardy can build its own network later, if it chooses to do so. (Frontier Exhibit 2, pp. Mr. Swatts reiterated that the Moorefield exchange, in its entirety, is a high-cost area to serve. Indeed, the entire Bluefield study area is a high-cost area. If Hardy is designated as an ETC, the size of the Federal Universal Service Fund will grow by the amount of support Hardy receives, since both Frontier and Hardy will receive USF disbursements for serving the same area and Frontier's receipts will not Mr. Swatts argued that, even though Frontier's receipts will not be diminished if Hardy is designated as an ETC, this is still an area There is not an unlimited supply of dollars to continue funding more and more carriers in rural high-cost areas. He stated that supporting multiple carriers in high-cost areas is not sustainable and is placing a strain on the Federal Universal Service mechanism. reiterated that it makes no economic or policy sense to support additional ETCs in study areas that qualify for high-cost support. Accordingly, he believes that it is not in the public interest to designate Hardy as an additional ETC in Frontier's Bluefield study area. (Frontier Exhibit 2, pp. 7-8).

The CAD filed the rebuttal testimony of Billy Jack Gregg, the Director of the Consumer Advocate Division of the Public Service Commission. Mr. Gregg has been the Director of the Commission's Consumer Advocate Division since 1981, and has been extensively involved in regulatory issues since that time, not only in his position as Director of the Consumer Advocate Division, but in his participation in the National Association of State Utility Consumer Advocates, the Rural Task Force of the Federal-State Joint Board on Universal Service, the Board of Directors of the National Regulatory Research Institute and, since March of 2002, as a member of the Federal-State Joint Board on Universal Service. Mr. Gregg has also been a member of the Board of Directors of the Universal Service Company. (CAD Exhibit 1, Appendix A). believes that it is in the public interest to grant ETC status to Hardy to serve Frontier's Moorefield exchange. The CAD's recommendation is based primarily on the cost to serve the Bluefield study area. Exhibit 1, pp. 1-2). Mr. Gregg also recommended that the Commission impose conditions upon any ETC designation of Hardy in order to ensure that the ETC requirements continue to be met on an ongoing basis and that the USF funds are used for their intended purpose. (CAD Exhibit 1, p. 2).

Mr. Gregg reiterated that Hardy is already providing wireline service in the Moorefield exchange in competition with Frontier. Hardy is a subsidiary of Hardy Telephone Cooperative, which serves the portion of Hardy County not covered by Frontier's Moorefield exchange, i.e., the